

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

LYNDELL THOMAS,

Petitioner,

v.

CIVIL ACTION NO. 5:10-cv-00143

WAYNE A. PHILLIPS,

Respondent.

MEMORANDUM OPINION AND ORDER

The Court has reviewed Petitioner's *Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus By a Person in State or Federal Custody* (Document 1). This action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). (Document 4). On November 20, 2012, the Magistrate Judge submitted Proposed Findings and Recommendation ("PF&R") (Document 5), wherein it is recommended that this Court dismiss this action as moot, in light of the Petitioner's release from custody. The Magistrate Judge also found that this cause of action is precluded by the principle of res judicata. (*Id.* at 4 n.2); (*Thomas v. Phillips*, Civil Action No.5:09-cv-01519, 2012 WL 2064531, *4 (S.D. W. Va. June 7, 2012)).


The Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner's right to appeal this Court's

Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir.1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir.1984). In addition, this Court need not conduct a de novo review when a party “makes general and conclusory objections that do not direct the Court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir.1982). Objections to the PF&R in this case were due on December 7, 2012. To date, no party has filed any objections to the Magistrate Judge’s Proposed Findings and Recommendation. As noted in the PF&R, Petitioner appears to have been released from custody on June 11, 2012. Inasmuch as Petitioner did not provide the Clerk’s Office with a forwarding address, the PF&R sent to him was returned as undeliverable. (Document 6.)

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the Proposed Findings and Recommendation, and **ORDERS** that Petitioner’s Section 2241 Petition (Document 1) be **DISMISSED** and that this matter be **REMOVED** from its docket.

The Court **DIRECTS** the Clerk to send a copy of this Order to Magistrate Judge VanDervort, to counsel of record, and to any unrepresented party.

ENTER: December 12, 2012


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA